IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 286 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA sd/-
and
HON'BLE MR.JUSTICE J.R.VORA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUMLABHAI VIRABHAI KOLI(LUHAR)

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 286 of 1997
MR PM VYAS for Petitioner No. 1-2
MR PRACHCHHAK, APP, for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 21/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. The Appellants - accused No.1 & 2 are the sons

and father respectively. They have challenged, in this Appeal, the impugned Judgment and order of conviction and sentence dated 21.3.1997, passed by Shri V.S.Bhatt, learned Sessions Judge, Panch Mahals at Godhra, in Sessions Case No.233 of 1996, convicting the appellants accused for the offences u/s. 302 read with Section 34 I.P.Code and sentenced them to suffer Life Imprisonment and to pay fine of Rs.200/- i/d to further under-go one year's R.I. to both the accused.

2. Lilaben, widow of Budhabhai, P.W.2, Ex.11, lodged F.I.R. Ex.12 before the Police on 27.5.1996 against both the accused - present appellants, for committing the murder of her husband deceased Budhabhai, on 27.5.1996. F.I.R. was lodged at 8.15 pm. for the incident which took place at about 4.00 pm on that day i.e. on 27.5.1996. She has stated in her FIR that Sumalo accused No.1 is the elder brother of her husband and Koramsinh is the younger brother of her husband. Virabhai Sankabhai is her father-in-law and Shantaben is her mother-in-law. All of them were staying separately but in one house. Her in-laws were staying with Koramsinh. All of them have got separate land. Prior to one year of the incident, her father-in-law was telling her husband that why he was calling his mother as "Witch" ? and stated that he was not going to give any share to him in the land and asked him to leave his house and thereby quarrel took place between them. Her father-in-law had also filed complaint against her husband for calling his mother as "Witch", which was pending in the Court at Baria. After the quarrel she and her husband had gone to Amreli and they were doing labour work in the factory of ground-nut. When they were staying there, at that time, they received Marriage Invitation of her nephew Tamansinh. Therefore, on last Tuesday, along with her husband, she came from Amreli to her house at Simla Ghasi and they were staying in a portion of house. Last Friday they had gone to attend the marriage of her nephew and thereafter they were at home. Today when she and her husband were at home at that time at about 4.00 O'clock her father-in-law Virabhai Sankabhai (accused No.2) and her brother-in-law (accused No.1) told her husband that the land was not going to be given and he should leave the house. At that time her daughter Sangita was crying out-side. When she was going to take her, at that time her brother in law Sumla suddenly chased her husband for beating. Thereupon, her husband ran away. She had also ran after her husband. At that time her brother-in-law went inside the house and brought Arrow & Bow and her father-in-law chased her husband with stick in his hand. Thereupon, she raised shouts not to beat, at that time

her father in law gave one stick blow near the neck of her husband. Thereupon, her husband fell down, but he immediately got up and at that time her brother-in-law shot her husband on his chest with Arrow and because of the Arrow hit on the chest as well as on the thigh of her husband, he fell down. Her husband himself took out arrow from his body and threw it there which was taken away by her brother-in-law along with him at his house. Thereafter, both of them had gone to their house. At that time she brought water for her house, but her husband was dead and blood was coming out from his chest and thigh because of Arrow blows. At the time of incident the persons nearby the house were present. They had seen the incident, but nobody came along with her, therefore, she rushed to Dev Gadh Baria Police Station for lodging the complaint.

3. Lilaben Budhabhai, P.W.2 has stated in her evidence before the Court that she was staying separately with her husband and children from her brother-in-law and her parents-in-law. Her husband was calling her mother-in-law as Witch for which her husband was sent to Jail and he was kept in Jail for four days and thereafter he was released from the Jail. Thereafter, they had gone to Amreli for doing labour work. On receiving the Marriage Invitation of their nephew they had come to attend marriage. After marriage they went to stay in their house. On the day of incident at about 4.00 pm her daughter was crying out-side the house. When her husband had gone to bring their daughter, at that time her brother-in-law Sumla came. Thereafter, her father-in-law came there. Thereupon, her husband started running. He was chased by her brother-in-law Sumala and father-in-law Virabhai with stick in his hand. They were shouting that they will kill him. Thereafter, her brother-in-law shot the Arrow . He shot three arrows on her husband. One arrow hit on his chest, another on his shoulder and third one in his stomach. Her father-in-law gave stick blow to her husband. Her husband ran about 100 steps and thereafter fell down and died. She had seen the incident. She was crying "don't beat, don't beat". Thereafter her father-in-law and brother-in-law went to their house. She also gone to her house and from there she came to Baria Police Station in Tempo and informed about the incident to the Police. Ex.12 is her F.I.R. At the time of incident, except her, no one else was present. Her husband was killed by her fahter-in-law and brother-in-law, sitting in the Court, because of the quarrel took place between them as her husband calling his mother-in-law as "Witch".

In her cross-examination she has denied that she had not stated before the Police that three Arrows were hit, one on chest, one on thigh and one in the stomach of her husband. The incident took place at a distance of two fields from her house. She had come to the Court from Village Zamran along with Bhavanbhai. The police summoned her at Zamran. However, she had denied the suggestion that when her husband was alive she had illicit relation with Bhavanbhai, which came to the knowledge of her husband and because of that quarrel was taking place between her and husband and that her husband was not allowing her to go away. She has also denied that because of this twice or thrice quarrel took place between her husband and Bhavanbhai. She had also denied the suggestion that because her husband was coming in their way she and Bhavanbhai killed her husband. She had denied that she had not stated in her statement before the Police that her father-in-law was shouting to kill her husband. She had not received any arrow injury during the incident. She was not hit by any one. She has admitted that at the time of incident she and her husband were running ahead and her brother-in-law and father-in-law were chasing them. At that time her brother-in-law Sumala hit arrow from behind. She had denied to have gone to the Court at Baria four months before and filed Affidavit. She was shown one paper having five thumb impression which she denied. She was not knowing where the paper was typed. She had denied the contents of the paper. She had also denied that to falsely involve her brother-in-law and father-in-law she has filed this false complaint.

4. From the above, it is clear that except the evidence of this witness Lilaben there is no witness to the incident. Admittedly, their relations with the accused were strained. Her husband was sent to Jail for calling his real mother as "Witch". In the FIR she had stated that at the time of incident persons from nearby the house were present. They had seen the incident, but no one had come, therefore, she had gone all alone to Bariya Police Station to lodge the complaint. However, in her evidence before the Court she has stated that no one else was present at the time of the incident. In her evidence she had also stated that she and her husband were running ahead followed by her brother-in-law and father-in-law and at that time her brother-in-law had shot the arrow from behind. If that is so, then her husband would not receive arrow injury on his chest and stomach. She has stated in her evidence that her husband took out the arrow from his body and threw the said arrow on the ground which was taken away by the accused Sumalo

along with him from his house which is highly improper. In fact when deceased was brought to the hospital the doctor took out the arrow from his body. When they were separated then there is no question of their staying in the same house along with the accused and other family members of accused. Lilaben had left with her husband for Labour Work at Amreli since more than one year, after her husband was sent to Jail. In that case they would have never gone to the house where the accused were staying. Both the accused picking up quarrel with her husband by saying that they will not give his share in the land is wrong because she herself has admitted that every one was given separate land. We are not prepared to believe that both the accused would allow this witness Lilaben to go unhurt at the time of incident if she had really witnessed the incident. She had stated that after the incident quietly she had gone to her house and then she had gone to Baria on foot and on the way she got the tempo and, therefore, she came to Baria Police Station and lodged the complaint. The incident took place at 4.00 pm, but the complaint was filed at 8.00 pm.

5. Doctor's evidence shows that other injury on the person of deceased Budhabhai was possible due to dragging. It was never the case of this witness Lilaben that her husband was dragged by the accused persons. She stated that after assaulting the deceased Budhabhai they quietly left for their house. This fact shows that there is a lot of substance in the suggestions made by the learned Advocate for the accused in her cross examination that because of illicit relation perhaps she, along with Bhavanbhai, who had come to the Court along her to depose, they must have tried to falsely involve the accused in this case. It is no doubt true that she had denied the suggestion, but it suggest so many things.

6. Considering the above aspect of the case, we are of the opinion that the learned Judge committed grave error in convicting the appellants - accused on the sole highly interested testimony of complainant Lilaben, who was the wife of deceased and admittedly inimical to the accused.

7. In view of the above discussion, this Appeal is allowed and the impugned Judgment and order of conviction and sentence dated 21.3.1997 passed by the learned Sessions Judge, Panchmahals at Godhra, in Sessions Case No.233 of 1996, convicting the appellants accused for the offence u/ss. 302 read with 34 I.P.Code and sentenced them to suffer Life Imprisonment and to pay fine of Rs.200/- i/d to further under-go one year R.I. is hereby

quashed and set aside. Both the Appellants accused are on Bail. Their Bail Bonds stand cancelled.

sd/-

(B.J.Shethna, J.)

Date : April 21, 2004 sd/-

(J. R. Vora, J.)

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